

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Insurance, Securities and Banking

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Lawrence H. Mirel

IN THE MATTER OF:)

Thomas R. Femister)

Femister Watts Investment Management)
1050 Connecticut Avenue, NW)
Suite 1000)
Washington, DC 20036)

2409 First Street, NW)
Washington, DC 20001)
_____)

ADMINISTRATIVE ORDER

Order No. SB-05-02

FINAL ORDER TO CEASE AND DESIST

In accordance with the provisions of the District of Columbia Administrative Procedure Act, D.C. Official Code § 1-1509(a) (1997 Supp.), and the Rules of Practice and Procedures for Hearings in the District of Columbia, 17 DCMR 8100 *et seq.* (2002), and pursuant to D.C. Official Code § 31-5606.02(b) you are hereby ordered to Cease and Desist your activities as a general securities representative ("broker-dealer agent") in the District of Columbia.

Whereas, Thomas R. Femister ("Respondent"), is the President of Femister Watts Investment Management Company, a financial consulting company, with a business address of 1050 Connecticut Avenue, NW, Suite 1000, Washington, D.C. 20036.

Whereas, Respondent has been a licensed general securities representative ("broker-dealer agent") in the District of Columbia, between the periods of January 7, 1997 to December 15, 2004, pursuant to D.C. Official Code § 31-5602.01(a).

Whereas, Respondent is licensed to transact insurance activities in the District of Columbia, in the areas of: (a) life; (b) accident, health and sickness; and (c) variable annuities/variable annuity products, pursuant to D.C. Official Code § 31-1131.01 *et seq*

Whereas, the Commissioner of the District of Columbia Department of Insurance, Securities, and Banking ("Department") issued a Summary Cease and Desist Order on June 14, 2005 informing Mr. Thomas Femister ("Respondent") that the Securities Bureau had investigated Respondent's activities to determine whether he engaged in, or was attempting to engage in, any act or practice constituting a violation of the District of Columbia Securities Act of 2000, (D.C. Law 17-272, D.C. Official Code § 31-5601.01 *et seq.* (2001 Ed.)), effective October 26, 2000 (D.C. Law 13-203), hereinafter referred to as the "Securities Act", and the rules promulgated thereunder.

Whereas, on June 14, 2005, the Commissioner notified the Respondent by certified mail, United States Postal Service, that he may request a hearing upon this matter by transmitting such request, in writing, within fifteen (15) business days of receipt of the Summary Cease and Desist Order, pursuant to D.C. Official Code § 31-5606.02(a);

Whereas, on June 20, 2005, the Department received confirmation from the United States Postal Service that the Certified Letter containing the Summary Cease and Desist Order had been delivered to Respondent's business address of 1050 Connecticut Avenue, NW, Suite 1000, Washington, DC 20036 and signed on June 15, 2005;

Whereas, as of July 7, 2005, fifteen (15) business days after Respondent received notification, the Department had not received a request for a hearing from Respondent or from his counsel;

Whereas, the Commissioner has the authority to issue a Cease and Desist order, bar the Respondent from engaging in the securities business in the District, issue an order imposing a civil penalty up to \$10,000 per violation, and issue an order requiring restitution pursuant to D.C. Official Code § 31-5606.02(b);

FINDINGS OF FACTS

1. Respondent first became registered as a General Securities Representative with an National Association of Securities Dealers ("NASD") member in October 1996. He was registered in that capacity with The Investment Company Center, Inc. ("TIC"), a registered broker-dealer, from November 2, 2000 to December 20, 2002.
2. On January 2, 2004, Horner, Townsend & Kent, Inc. ("HTK"), a registered broker-dealer, submitted an application for licensure ("Form U4") to the NASD through which Respondent

sought to be registered with HTK as a General Securities Representative. The same Form U4 was submitted by Respondent to the Department's Securities Bureau seeking to become licensed as a general securities representative in the District of Columbia.

3. Respondent was registered with HTK as a general securities representative by the NASD from February 3, 2004 to December 15, 2004. Respondent was licensed as a general securities representative in the District of Columbia from January 7, 1997 to October 27, 1997, from June 25, 1999 to October 30, 2000, from October 27, 1997 to February 11, 1999, from November 2, 2000 to November December 26, 2002, and from March 3, 2004 to December 15, 2004, pursuant to D.C. Official Code § 31-5602.01(a).

4. In or about early January 2002, a complainant Monica Smith ("MS") authorized Respondent to transfer funds from her Individual Retirement Account ("IRA") at TIC, for which Respondent served as the account representative, to Central Carolina Bank of Durham ("CCB") for the purpose of purchasing a certificate of deposit for her. On January 7, 2002, Respondent caused approximately \$76,971 to be transferred by wire from MS's IRA at TIC to a bank account at CCB (account # 1390426) which was owned by Respondent. MS had no knowledge that Respondent transferred her funds to an account he owned and MS did not authorize him to do so. For a substantial time after the transfer occurred, MS understood and believed Respondent had purchased a certificate of deposit in her name with the full amount of funds or had otherwise invested the funds for her benefit. Respondent did not invest or apply all of MS's funds for her benefit but converted at least a portion of MS's funds to his own use and benefit, in violation of D.C. Official Code § 31-5602.07(a)(9),(14).

5. On or about January 30, 2004, Respondent had an application for registration pending with HTK. Respondent provided HTK a copy of a fictitious document that MS had purportedly signed and that Respondent claimed had been filed in the District Court of Maryland for Prince George's County. The document stated, in substance, that MS retracted certain statements she had previously made about Respondent. On or about February 11, 2004, Respondent provided HTK a copy of a fictitious letter addressed to TIC dated May 3, 2003 that MS had purportedly written, signed and sent to TIC. The letter stated MS wanted to withdraw her complaint against Respondent. When he provided the documents to HTK, Respondent knew they were fictitious, knew MS's signatures on them were not genuine and knew the respective contents were false. Respondent was permitted to register in the District of Columbia as a general securities representative as a result of the false information he provided, in violation of D.C. Official Code § 31-5602.07(a)(1).

6. By letters sent to Respondent dated June 16, 2004, September 10, 2004 and November 3, 2004, NASD requested, pursuant to NASD Rule 8210, information in writing concerning, among other things, the funds that were transferred from MS's IRA at TIC to the bank account Respondent owned at CCB on January 7, 2002. The letters specifically requested Respondent to provide a complete accounting of the use and disposition of the entire amount transferred to the account he owned and to provide copies of all documents reflecting or evidencing any use and/or

disposition of any part of the funds. Respondent failed to provide NASD an accounting of the use and disposition of MS's funds as requested, failed to provide NASD any documents evidencing or reflecting the use and disposition of MS's funds, and failed to provide other information that NASD requested from him. As a result, among other things, Respondent consented to the imposition of the sanction of a bar from association with any NASD member. The NASD's Letter of Acceptance, Waiver, and Consent (No. C9A050019) ("AWC") was accepted by the NASD's National Adjudicatory Council Review Subcommittee; and by the Office of Disciplinary Affairs on May 3, 2005. The acceptance of this AWC serves as a Final Disciplinary Order by the NASD. As a result of the foregoing, Respondent has violated Sec. 31-5602.07(a)(6) of the Securities Act.

7. It is in the public interest of the citizens of the District of Columbia and for the protection of the investors that Respondent be prohibited from violating the provisions of the Securities Act in connection with selling or making offers to sell securities, buying or soliciting offers to buy securities, and transacting business in the District of Columbia in any manner.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the Respondent and over the subject matter contained herein against the Respondent, pursuant to D.C. Official Code § 31-5606.02(b).

2. Respondent: (a) has misappropriated funds for his to his own use and benefit, in violation of D.C. Official Code § 31-5602.07(a)(9),(14); (b) filed a false application to the Department's Securities Bureau, in violation of D.C. Official Code § 31-5602.07(a)(1); and (c) is the subject of a Final Disciplinary Order by the NASD, in violation of D.C. Official Code § 31-5602.07(a)(6).

3. The Commissioner has the authority to issue an order against Respondent imposing a civil penalty up to \$10,000 for each violation pursuant to D.C. Official Code § 31-5606.02(b)(4), and the authority to issue an order requiring Respondent to pay restitution pursuant to D.C. Official Code § 31-5606.02(b)(5).

4. There is reasonable cause to believe the Respondent has engaged in willful violations of the District of Columbia Securities Act, specifically §§ 31-5602.07(a)(6), (9).

5. There is reasonable cause to believe the Respondent will continue to commit acts and omissions in violation of the District of Columbia Securities Act.

6. It is necessary and appropriate for the protection and preservation of the public interest that the Respondent be ordered to cease and desist from transacting business in the District of Columbia.

NOW THEREFORE, IT IS ORDERED:

Pursuant to the authority contained in Sec. 31-5606 02(b) of the Securities Act of 2000, Respondent Thomas R. Femister shall:

1. immediately CEASE AND DESIST from transacting securities activities in the District of Columbia, including offering or selling securities in the District, and from directly or indirectly aiding or assisting other individuals or entities from offering or selling securities in the District of Columbia; or acting in any capacity as a broker-dealer agent in the District of Columbia;
2. immediately CEASE AND DESIST from any and all other or further violations of the District of Columbia Securities Act, Insurance Agents and Brokers Act, and the rules promulgated thereunder; or any other District of Columbia laws or rules;
3. be barred from engaging in the securities business in the District of Columbia;
4. pay a civil penalty in the amount of sixty eight thousand four hundred dollars (\$68,400); and
5. pay restitution to Complainant Monica Smith in the amount of seventy six thousand nine hundred seventy one dollars (\$76,971).

SO ORDERED:

Dated this 16th day of Aug., 2005.

WITNESS MY HAND AND THE OFFICIAL SEAL of the District of Columbia Department of Insurance, Securities and Banking, this 17th day of August, 2005

**Government of the District of Columbia
Department of Insurance, Securities and Banking**

Washington, District of Columbia

Subscribed and sworn to before me, in my presence,

this 17th day of August, 2005

by Lawrence H. Mirel

David W. Most Notary Public
My commission Expires August 31, 2006

Lawrence H. Mirel

Lawrence H. Mirel, Commissioner